IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5280 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SHRI. G.B. RANA

Appearance:

1. Special Civil Application No. 5280 of 1987

MR HARDIK C RAWAL for Petitioner No. 1

RULE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/05/2002

ORAL JUDGEMENT

#. Heard Mr.H.C.Rawal, learned advocate appearing on behalf of the petitioner Corporation. Though Notice of Rule has been served on the respondent, none remained present for respondent, nor any advocate seems to have engaged on behalf of the respondent workman. Therefore,

this matter is taken up for final hearing even in absence of the respondent workman.

#. The petitioner Corporation has challenged the award passed by the Labour Court, Ahmedabad in Reference No.1053 / 1984 dated 12th August, 1986, wherein the labour court has granted reinstatement to respondent workman in service without backwages of the interim period. This Court has while admitting this matter issued RULE, but no Stay has been granted by this Court against reinstatement of the workman. Initially also service of Notice of Rule remained unserved on the respondent. Thereafter, this Court has issued fresh notice of RULE by order dated 16th April, 2002 which has been served on the respondent workman. Learned Advocate for petitioner has availed direct service and Mr.Rawal, learned advocate for petitioner Corporation makes a statement before this Court that fresh notice of Rule has been served on the respondent but despite of this fact, the respondent has not remained present in the present proceedings.

#. Learned advocate Mr.Rawal appearing on behalf of the petitioner Corporation has submitted that on 6th June, 1980 the respondent workman was on his duties as conductor on bus from Ahmedabad to Dhanera route and at the time of checking, it was fond that the respondent had collected fare from seven passengers without issuing the tickets in their favour and he had not issued tickets to six other passengers. Thereafter, on the basis of this allegation, departmental inquiry was initiated against the respondent workman and ultimately, the competent authority has dismissed the workman from service on 28th December, 1981. Mr.Rawal, learned advocate has submitted that the labour court has committed gross error in exercising the powers under Section 11-A of the Industrial Disputes Act, 1947. Mr.Rawal, learned advocate has also submitted that the labour court overlooking the fact that misconduct is established against the respondent workman was in respect of misappropriation of public fund. It is also pointed out that the bus was travelled upto distance of 18 kms when it was checked and therefore, it was an obvious ill intention on the part of the workman to misappropriate the fund of the Corporation. Mr.Rawal, learned advocate has also submitted that the explanation given by the workman cannot be accepted and further pointed out that the past record of the workman is also bad which was produced before the labour court vide Exh.47 even though the past record was not taken into consideration by the

labour court and on the contrary, the labour court has granted reinstatement of respondent workman in service. However, learned advocate submits that since interim stay against the award in question has not been granted by this Court, the workman has been reinstated in service and thereafter also, the workman has committed 14 [fourteen] misconducts and for that relevant record is produced by the petitioner Corporation before this Court. Therefore, learned advocate Mr.Rawal requests this Court that the labour court has granted reinstatement to the respondent workman without backwages of the interim period but in such case, denial of backwages cannot be considered to be sufficient punishment and therefore, the labour court should have considering the case of the respondent workman for imposing some severe punishment in light of past record of the workman and gravity of misconduct and thus, the aspects overlooked by the labour court require to be taken into consideration by this Court. Therefore, in short submission of Mr.Rawal on behalf of the petitioner Corporation that the labour court has committed gross error while granting relief of reinstatement with continuity of service and same requires to be interfered with by this Court while exercising the powers under Article 226 and 227 of the Constitution.

#. I have considered submissions of the learned advocate Mr.Rawal on behalf of the petitioner Corporation. Before the Labour Court, the respondent workman has filed statement of claim vide Exh.4 and written statement was filed by the petitioner Corporation vide Exh.8. Thereafter, documentary evidence has been produced by the petitioner Corporation vide Exh.6 and the respondent workman by way of purshis Exh.7 not challenged legality and validity of the departmental inquiry. Thereafter, the labour court has examined the merits of the matter. The labour court has examined the merits after considering the incident in question. The labour court has observed that actual misconduct which has been alleged against the respondent workman that on 9th June, 1980 when the respondent workman was on route from Ahmedabad to Dhanera, his bus was checked by the checking staff and it was found that two passengers travelling from Deesa to Dhanera of one group from whom, Rs.5.00 has been recovered from these two passengers but tickets were not issued. Secondly, the workman had not issued tickets to six passengers of other group and more so, the way bill was found open. The labour court has considered that the misconduct is found to be proved and looking to the past record vide Exh.47 and considering the fact that in past record, no serious misconduct has been committed

by the respondent workman and in present case also, allegations was for recovering the fare of Rs.5/- and this being small amount, the labour court has come to conclusion to deny backwages of the interim period would amount to sufficient punishment to the respondent workman. Therefore, the labour court has exercised the powers after considering length of service, past record and gravity of misconduct, granted reinstatement in favour of the respondent workman.

#. It has come on record that the labour court has denied the backwages to the respondent workman but considering overall facts and circumstances as discussed in the award, in view of this Court, mere denial of backwages cannot be said to sufficient punishment because in such case of recovering fare and not issuing the tickets, naturally the respondent workman is not entitled to have backwages of the interim period as matter of right and legal right. Therefore, the labour court has committed error when it has not imposed any punishment on the respondent workman when the misconduct is found to have proved. Therefore, according to my opinion, considering the gravity of misconduct and the past record produced before the labour court at Exh.47 and the subsequent past record, this Court is of the opinion that if punishment of stoppage of five increment with cumulative effect, is awarded on the respondent workman, will the meet the ends of justices. Accordingly, the award in question requires to be modified.

#. In the result, present petition is partly allowed. The award in question passed by the labour court, Ahmedabad in Reference No.1053 / 1984 dated 12th August, 1986 is hereby modified to the effect that the respondent workman has to suffer punishment of stoppage of five increments with cumulative effect. Rest of the directions issued by the labour court granting reinstatement to the respondent workman without backwages of interim period is not disturbed by this Court and the same will remain intact, Accordingly, Rule is made absolute to the extent indicated above. No order as to costs.

Date : 9-5-2002 [H.K.Rathod, J.]

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